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| ANSEL M. SCHWARTZ | | | EXAMINER | |
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| 201 N CRAIG STREET PITTSBURGH, PA 15213 | | | ART UNIT | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary Examiner | | | Application No. | Applicant(s) | | | | |
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| Examiner Art Unit 1631 | Office Action Summary | | 09/262,506 | PERLIN, MARK W. | | | | |
| Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Educations of time may be available under the proteins of 3 CFR 1.13(s), in no event, however, may a reply be timely find of the EXX (s) MONTH(S from the mailing date of this correspondence of 3 CFR 1.13(s), in no event, however, may a reply be timely find of the EXX (s) MONTH(S from the mailing date of this correspondence of 3 CFR 1.13(s), in no event, however, may a reply be timely find of the EXX (s) MONTH(S from the mailing date of this correspondence of 3 CFR 1.13(s), in no event, however, may a reply be timely find of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S from the mailing date of this correspondence of the EXX (s) MONTH(S) FROM the EXX | | | | Art Unit | | | | |
| - The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Electrosized of the many be available under the precision of 3 CFR 1.736(b). In no event, however, many a repty be timely filled with the procession of 3 CFR 1.736(b). In no event, however, many a repty be timely filled with the procession of the repty available under the precision of 3 CFR 1.736(b). In no event, however, many a repty be timely filled with the process of the repty available under the repty within the solidatory price with the procession of the repty within the solidatory minimum of thinky (30) days, a very within the solidatory minimum of thinky (30) days, with the contradiction of the repty within the solidatory minimum of the repty of the the repty within the solidatory minimum of the repty of the the repty of the repty within the solidatory minimum of the repty of the repty within the solidatory minimum of the repty of the repty of the repty within the solidatory minimum of the repty of the repty of the solidatory minimum of the repty of the repty of the repty of the solidatory minimum of the repty of the communication. 1) □ Responsive to communication(s) filed on 03 December 2002. 2a) □ This action is FINAL. 2b) □ This action is non-final. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 c.D. 11, 453 o.G. 213. Disposition of Claims 4) □ Claim(s) 34-38 is/are pending in the application. 5) □ Claim(s) 34-39 is/are objected to by the Examiner. 5) □ Claim(s) 34-39 is/are objected to set repty of the process of the process of the process of the repty of the process of the process of the repty of the process o | | | | 1631 | | | | |
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| THE MAILING DATE OF THIS COMMUNICATION. Educations or time may be available under the provision of 37 CPR 1.75(g). In no evert, however, may a reply be timely filed after 50. (g) MCNPTS from the mailing date of this corror when a transfer of the control of the | Period for Reply | | | | | | | |
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| | 2) Noti | ce of Draftsperson's Patent Drawing Review (PTO-948) | 5) Notice of | | | | | |

Application/Control Number: 09/262,506

Art Unit: 1631

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 12/03/02 has been entered.

Claims 34-49 are pending. Claims 39-49 are newly added.

Applicant's arguments and amendments have been entered and considered. Any rejections not reiterated below have been withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 34-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending

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Application No. 09/776,096 as published in US Patent Application Publication US 20020152035 A1. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to methods having the same steps, utilizing the same statistical methods to the same ends. The methods of the instant application: obtain DNA, perform PCR to obtain a signal, analyze the signal using a linear model, and identify an allele, which can then be used to identify an individual. The methods of the '096 application: obtain DNA, perform PCR to obtain a signal, analyze the signal (all in claim 1), wherein the analysis can be a linear model (claim 5) and can be used to identify a person or individual (claims 7, 11). The '096 application also discloses the various limitations of claims 39-49, but does not claim them.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The actual application 09/776,096 is not available to the examiner as of this date. This rejection is based upon the claims as published in the Pre Grant Publication of the Application, published 10/17/2002. If the claims under prosecution now substantially differ from those published, or are not the same claims being examined, Applicant is encouraged to provide arguments and evidence thereof.

Conclusion

The claims are free of the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary K Zeman whose telephone number is (703) 305-7133.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached at (703) 308-4028.

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Official fax numbers for this Art Unit are: (703) 308-4242, (703) 872-9306. An *unofficial* fax number, direct to the Examiner is (703) 746 5279. Please call prior to use of this number.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC1600 Receptionist whose telephone number is (703) 308-0196.

mkz 1/24/03

> MARY K. ZEMAN DOMARY EXAMINER

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